

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM CHARLES CLEMONS, III,

Defendant-Appellant.

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UNPUBLISHED

April 14, 2011

No. 296832

Genesee Circuit Court

LC No. 09-025931-FH

Before: FORT HOOD, P.J., and TALBOT and MURRAY, JJ.

MEMORANDUM.

William Charles Clemons, III was convicted by a jury of possession of marijuana, a misdemeanor.<sup>1</sup> He was sentenced to a prison term of 16 to 24 months, reflecting an enhancement of sentence.<sup>2</sup> Clemons only challenges his sentence. We affirm.

Clemons was originally charged with delivery of less than 50 grams of cocaine<sup>3</sup>, assaulting, resisting, or obstructing a police officer causing injury<sup>4</sup>, and possession of marijuana.<sup>5</sup> The information contained a “drug enhancement notice” advising that because Clemons had a previous controlled substance conviction, he was subject to sentence enhancement pursuant to statute.<sup>6</sup> The amended information omitted the assault/resisting/obstructing charge and did not include a drug enhancement notice. The cocaine charge was subsequently dismissed.

Clemons argues that once the information was amended to charge him with a misdemeanor, the court was required to sentence him in accordance with the misdemeanor

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<sup>1</sup> MCL 333.7403(2)(d).

<sup>2</sup> MCL 333.7413(2).

<sup>3</sup> MCL 333.7401(2)(a)(iv).

<sup>4</sup> MCL 750.81d(2).

<sup>5</sup> MCL 333.7403(2)(d).

<sup>6</sup> MCL 333.7413.

statute and not under the drug enhancement statute. Contrary to his position, our Supreme Court has stated:

The trial court used the double-penalty provision of the Public Health Code, MCL 333.7413(2), to convert the misdemeanor into a felony. The sentence enhancement statutes do not create new offenses; they merely authorize trial courts to increase the length of time that a defendant must serve.<sup>7</sup>

The trial court was not precluded from increasing the length of time that Clemons would serve for the charged offense.

Further, Clemons received all of the notice to which he was entitled. Although the statutory provision used to enhance Clemons' sentence does not require notice,<sup>8</sup> "due process requires notice of the information in the presentence report sufficiently in advance of sentence to provide a meaningful opportunity to contest its accuracy."<sup>9</sup>

The presentence report (PSIR) indicated that Clemon's conviction "was enhanced to a two-year maximum under the Drug enhancement notice" and the "current offense" was described as "Possession of Marijuana (VDL 2<sup>nd</sup> or Subs.)." This was consistent with the Sentencing Information Report (SIR), which indicated that the maximum sentence was 24 months. These documents were sufficient to put Clemons on notice that enhancement would be sought at sentencing and to satisfy the due process notice requirement.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Michael J. Talbot  
/s/ Christopher M. Murray

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<sup>7</sup> *People v Wyrick*, 474 Mich 947; 707 NW2d 188 (2005).

<sup>8</sup> MCL 333.7413(2).

<sup>9</sup> *People v Eason*, 435 Mich 228, 251; 458 NW2d 17 (1990).